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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 29

[FAC 2005-60; FAR Case 2012-019; Item IV; Docket No. 2012-0019; Sequence 1]

RIN 9000-AM29

Federal Acquisition Regulations; DARPA-New Mexico Tax Agreement

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to add the United States Defense Advanced Research Projects Agency (DARPA) to the list of agencies that have entered into separate tax agreements with the State of New Mexico (NM). The DARPA-NM tax agreement eliminates the double taxation of Government cost-reimbursement contracts when DARPA contractors and their subcontractors purchase tangible personal property to be used in performing services in whole or in part in the State of New Mexico, and for which title to such property will pass to the United States upon

delivery of the property to the contractor and its subcontractors by the vendor.

DATES: Effective date: **[Insert date 30 days after publication in the FEDERAL REGISTER.]**

FOR FURTHER INFORMATION CONTACT: Mr. Edward N. Chambers, Procurement Analyst, at 202-501-3221 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite FAC 2005-60, FAR Case 2012-019.

SUPPLEMENTARY INFORMATION:

I. Background

On August 18, 2011, DARPA and the Taxation and Revenue Department of the State of New Mexico entered into the DARPA-NM tax agreement to eliminate the double taxation of Government cost-reimbursement contracts when DARPA contractors and their subcontractors purchase tangible personal property to be used in performing services in whole or in part in the State of New Mexico and for which title to such property will pass to the United States upon delivery of the property to the contractor and its subcontractors by the vendor.

II. Discussion

The FAR is amended to add the United States Defense Advanced Research Projects Agency to the list of participating agencies under FAR 29.401-4(c). DARPA joins the list of other agencies with existing tax agreements with the State of New Mexico.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Publication of this final rule for public comment is not required by statute

"Publication of proposed regulations", 41 U.S.C. 1707, is the statute which applies to the publication of the

Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it recognizes actions taken by DARPA that do not have a significant effect on contractors or offerors.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant FAR revision, and 41 U.S.C. 1707 does not require publication for public comment.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subject in 48 CFR Part 29

Government Procurement.

Dated: July 16, 2012

Laura Auletta,
Director,
Office of Governmentwide
Acquisition Policy,
Office of Acquisition Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR part 29 as follows:

PART 29-TAXES

1. The authority citation for 48 CFR part 29 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

29.401-4 [Amended]

2. Amend section 29.401-4 in paragraph (c)(1) by adding to the listing, in alphabetical order, "United States Defense Advanced Research Projects Agency;" .

[Billing Code 6820-EP]

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